



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8WD-SDU

FEB 21 2020

Honorable Reggie Wassana
Governor
Cheyenne and Arapaho Tribes of Oklahoma
100 Red Moon Circle
P.O. Box 145
Concho, Oklahoma 73022

Re: U.S. Environmental Protection Agency Underground Injection Control Program
Timeframe for Tribal Consultation on the EPA's Proposed Actions for the Dewey-Burdock Uranium
Recovery Site near Edgemont, South Dakota

Dear Governor Wassana:

The EPA is approaching the end of the tribal consultation process on the EPA's proposed actions for the Dewey-Burdock Uranium Recovery Site near Edgemont, South Dakota. Because we have previously consulted with the Cheyenne and Arapaho Tribes of Oklahoma regarding this matter, we are reaching out to remind you of EPA's July 8, 2019 letter requesting tribal consultation with your Tribes.

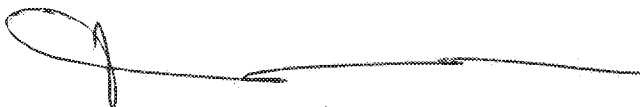
The EPA is moving forward on final Underground Injection Control (UIC) permit decisions. Therefore, we are setting a deadline of March 6, 2020, for scheduling a tribal consultation meeting to be held by April 30, 2020. The EPA believes setting these deadlines is necessary to provide the EPA adequate time to give the Tribes' comments due consideration and develop a response to the Tribes on how the EPA has addressed the comments in the final UIC permit decisions.

If you have interest in following up on our previous tribal consultation, or consulting in response to EPA's July 8, 2019 letter, please contact me by phone at 303-312-6392 or by email at oonnor.darcy@epa.gov or have one of your staff contact Omar Sierra-Lopez of my staff by March 6 and work with him to schedule a tribal consultation meeting before April 30, 2020. Mr. Sierra-Lopez can be reached at (800) 227-8917, extension 312-7045 or (303) 312-7045; or by email at sierra-lopez.omar@epa.gov. I have enclosed the July 8, 2019, letter we sent to you that lists the topics we would particularly like to discuss with you.

If we do not hear from the Tribes by March 6, we will interpret the lack of response to indicate that at this time the Tribes have conveyed all the information it wishes to provide the EPA on these proposed EPA actions at the Dewey-Burdock uranium in-situ recovery site through previous consultation activities, specifically our meeting on September 11, 2019.

The EPA will follow up with a phone call to confirm that you received this letter and are aware of the timeframes discussed above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darcy O'Connor', with a long horizontal flourish extending to the right.

Darcy O'Connor, Director
Water Division

Enclosure (1)

cc: Mr. William Tall Bear
Mr. Damon Dunbar, Environmental Director
Mr. Max Bear, Historic Preservation Director
Mr. Antonio Church, Esq., Attorney



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Honorable Reggie Wassana
Governor
The Cheyenne and Arapaho Tribes of Oklahoma
100 Red Moon Circle P.O. Box 145
Concho, Oklahoma 73022

Re: U.S. Environmental Protection Agency Underground Injection Control Program
Invitation for Consultation on revised Draft Permits and related actions for the Dewey-Burdock
Uranium Recovery Site near Edgemont, South Dakota

Dear Governor Wassana:

The U.S. Environmental Protection Agency Region 8 Underground Injection Control (UIC) Program would like to consult with you, and any other representatives you would like to invite, on revised Draft Permits for injection wells and an updated draft Environmental Justice Analysis for the proposed Dewey-Burdock uranium in-situ recovery (ISR) site near Edgemont, South Dakota. The EPA anticipates issuing the revised Draft Permits in August 2019.

In March 2017, the EPA UIC Program issued two Draft Permits for Powertech (USA) Inc.: one for Class III injection wells used during the uranium recovery process; the second for deep injection wells for the disposal of treated ISR process waste water. The EPA also issued a draft Environmental Justice Analysis at that time. After considering comments received during the public comment period, the EPA has decided to issue revised Draft Permits, a revised draft Environmental Justice Analysis, a revised Aquifer Exemption Record of Decision and an updated document describing the EPA's plan for compliance with section 106 of the National Historic Preservation Act.

The location of the Dewey-Burdock site is shown in the enclosed Figure 1. For additional information about the proposed Dewey-Burdock site, please see the enclosed page entitled *Background Information on the Proposed Dewey-Burdock Uranium In-Situ Recovery Site* and enclosed Figures 1 through 5.

Environmental Justice Analysis

During consultation, we plan to present information about the revised draft Environmental Justice Analysis, specifically related to the The Cheyenne and Arapaho Tribes of Oklahoma's interest in the Black Hills as a sacred site. We also welcome any input the Tribe would be willing to offer to assist the EPA in presenting an accurate picture of environmental justice issues related to the Black Hills.

The EPA Tribal Consultation Policy

It is the EPA's policy to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. The EPA views consultation as a process of meaningful communication and coordination between the EPA and tribal officials prior to the EPA taking actions or implementing decisions that may affect tribes. For information about the EPA *Policy on Consultation and Coordination with Indian Tribes* please visit the following website: <https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

The EPA also developed the *Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights* (Treaty Rights guidance) to complement the EPA's general *Policy on Consultation and Coordination with Indian Tribes*. The Treaty Rights guidance provides affirmative steps for the Agency to take during tribal consultations when an EPA action occurs in a specific geographic location and a resource-based treaty right, or an environmental condition necessary to support the resource, may be affected by the EPA's action. The Treaty Rights guidance was developed after nationwide tribal consultation. This guidance document is found at the following website: https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes#treaty_rights.

Consistent with the Treaty Rights guidance, the EPA would also like input from the The Cheyenne and Arapaho Tribes of Oklahoma on treaty rights related to our revised draft permitting actions. The EPA acknowledges that some tribes have previously provided written public comment stating their position that treaty rights would be impacted by the Draft Permits. Nevertheless, pursuant to the Treaty Rights guidance, EPA seeks input on the following questions:

- (1) Do treaties exist within the project area?
- (2) What treaty rights exist in or what treaty-protected resources rely upon the project area? Among other things, have treaty-based groundwater rights in the project area been recognized by judicial decree or congressional settlement?
- (3) How are treaty rights potentially affected by the revised Draft Permits?
- (4) Any concerns you have related to treaty rights.

The EPA has a separate responsibility under section 106 of the National Historic Preservation Act (NHPA) to consult with tribes that attach religious and cultural significance to historic properties that may be affected by an undertaking. Accordingly, we invite the The Cheyenne and Arapaho Tribes of Oklahoma to engage in government-to-government consultation under section 106. Wherever appropriate, the EPA attempts to integrate this section 106 consultation with general consultation under our Tribal Consultation Policy. Therefore, we propose the following potential topics for consultation:

- (1) Changes from the first Draft UIC permits to the second Draft UIC permits;
- (2) Any concerns you may have about the proposed Dewey-Burdock project and the UIC permitting actions; and
- (3) Potential historic properties, including those of traditional religious and cultural importance, within the Dewey-Burdock area of potential effect.

We understand that the The Cheyenne and Arapaho Tribes of Oklahoma may raise issues in consultation that should be kept confidential and nonpublic. During our consultation process, if there is information that you would like to provide, but that you believe should remain confidential, please specifically identify this information during our consultation meeting and we will explore options for keeping the information confidential in accordance with 36 CFR § 800.11(c). As we move forward with the

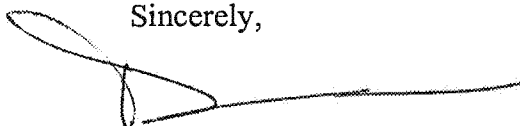
consultation process, please be aware that any information you provide to the EPA in writing will become a part of the public record unless other arrangements are made to maintain confidentiality.

We are requesting a reply from you as to whether the The Cheyenne and Arapaho Tribes of Oklahoma wishes to consult with the EPA. If you are interested in meeting with the EPA, please reply by August 2, 2019. Consultation requests should be submitted to Valois Robinson of my staff, who can be reached at (800) 227-8917, extension 312-6276 or (303) 312-6276; or by email at robinson.valois@epa.gov. Please include a point of contact for the Tribe so we can keep you informed as the EPA moves forward with this consultation process.

If we do not hear from you by August 2, 2019, we will interpret this to mean that you do not wish to consult with the EPA at this time. The EPA would also welcome the opportunity to consult after the revised Draft Permits are issued to discuss these important issues.

We appreciate the The Cheyenne and Arapaho Tribes of Oklahoma's prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darcy O'Connor', with a long horizontal stroke extending to the right.

Darcy O'Connor, Director
Water Division

Enclosures (6)

cc: Damon Dunbar, Environmental Director
Max Bear, Tribal Historic Preservation Officer

Background Information on the Proposed Dewey-Burdock Uranium In-Situ Recovery Site

The Dewey-Burdock site is located north of Edgemont, South Dakota, in Fall River and Custer Counties as shown in the enclosed Figure 1. The EPA Region 8 UIC Program has received Class III and Class V injection well permit applications for this site from Powertech (USA) Inc. The Class III injection wells are related to uranium recovery; the Class V injection wells are deep wells for the disposal of treated process wastewater. The Class III permit application requests authorization for 14 injection well fields including approximately 2,330 wells to inject and recover fluids for the in-situ recovery of uranium. The Class V area permit application requests authorization for the injection of ISR process waste fluids (treated to meet radioactive and hazardous waste standards) into two proposed wells injecting into the Minnelusa Formation. The Class V area permit application requests authorization for up to four deep injection wells in case the two currently proposed wells do not have the capacity to dispose of the anticipated total volume of all ISR process waste fluids.

Powertech proposes using ponds to treat and store treated water that will be injected into the deep injection wells. The locations and configuration of the treatment ponds are shown in Figure 2. These ponds are not regulated under the UIC Program. Powertech will submit an application for review and approval of the pond construction design plan to the EPA Region 8 Air Program. The ponds will not allow infiltration into the subsurface. The ponds are not designed to be evaporation ponds, although some amount of evaporation will occur during storage of the treated water before it is injected into the deep injection wells. The evaporation process does not involve release of heavy metals, including uranium or other radioactive elements, into the air. The EPA has information about radiation at <http://www2.epa.gov/radiation>.

The total proposed project area consists of approximately 10,580 acres (4,282 ha) east and west of the Dewey Road (County Road 6463), including portions of Sections 1-5, 10-12, 14 and 15 in Township 7 South, Range 1 East and Sections 20, 21, 27, 28, 29, and 30-35 in Township 6 South, Range 1 East, Black Hills Meridian. The surface area that will actually be impacted by the uranium ore processing plants, the 14 proposed uranium in-situ recovery well fields, the two proposed deep injection wells, treatment and storage ponds, roads and other surface-disturbing facilities is less than the 10,580-acre project area. The enclosed Figure 1 is a map showing the project site location. Figure 3 is a map showing the locations of the proposed wellfields containing Class III injection wells and the site project boundary. Figure 4 shows the locations for the two proposed deep Class V injection wells. Figure 5 shows a stratigraphic cross section of geologic formations at the Dewey Burdock site and the proposed injection zones for both the Class III and Class V injection wells. The Powertech Dewey-Burdock Project Class III and Class V area permit applications, and other documents that are part of the permit administrative record, are available for public review on the EPA Region 8 UIC Program website at <https://www.epa.gov/uic/epa-dewey-burdock-class-iii-and-class-v-injection-well-draft-area-permits>.

Dewey Burdock Location Map

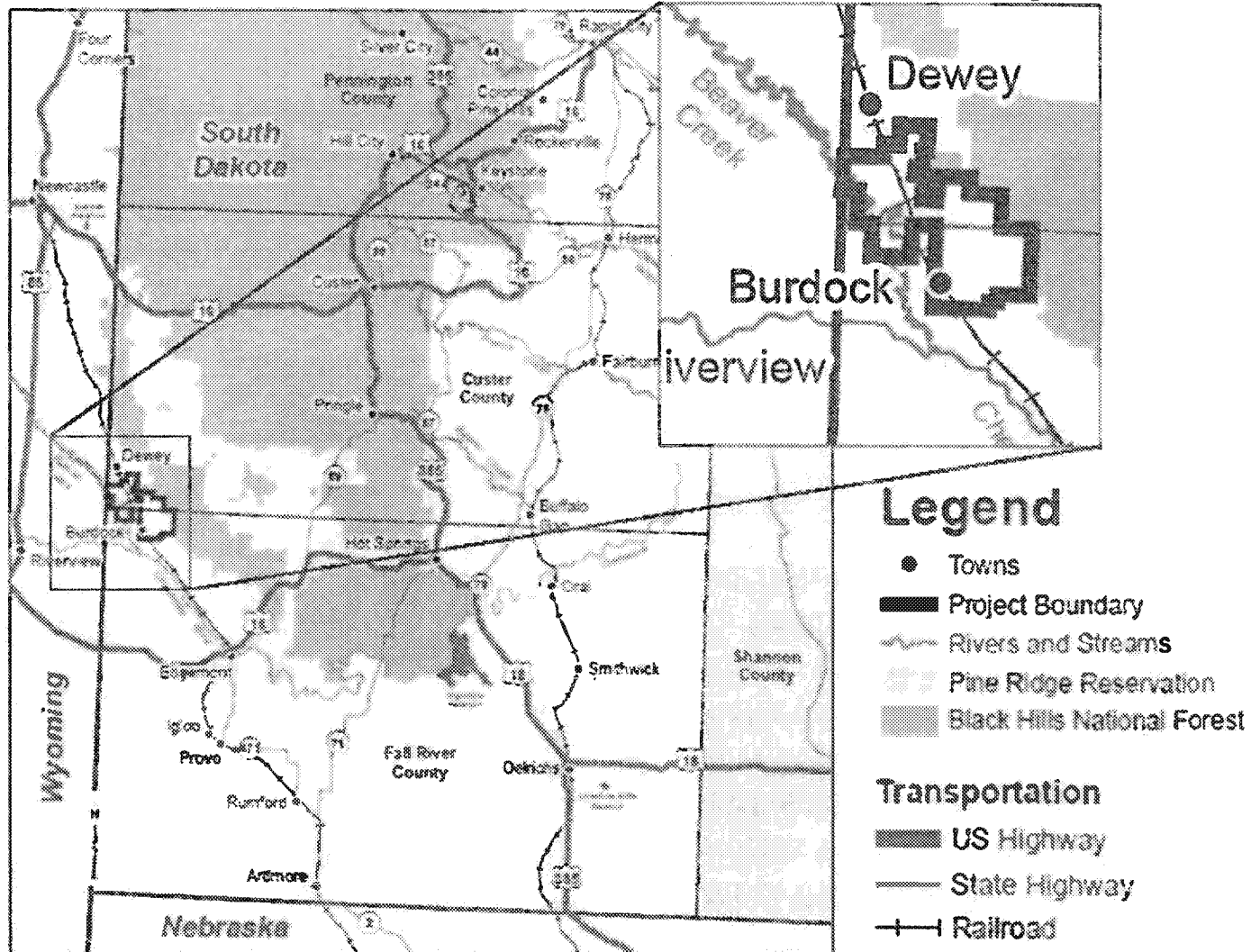
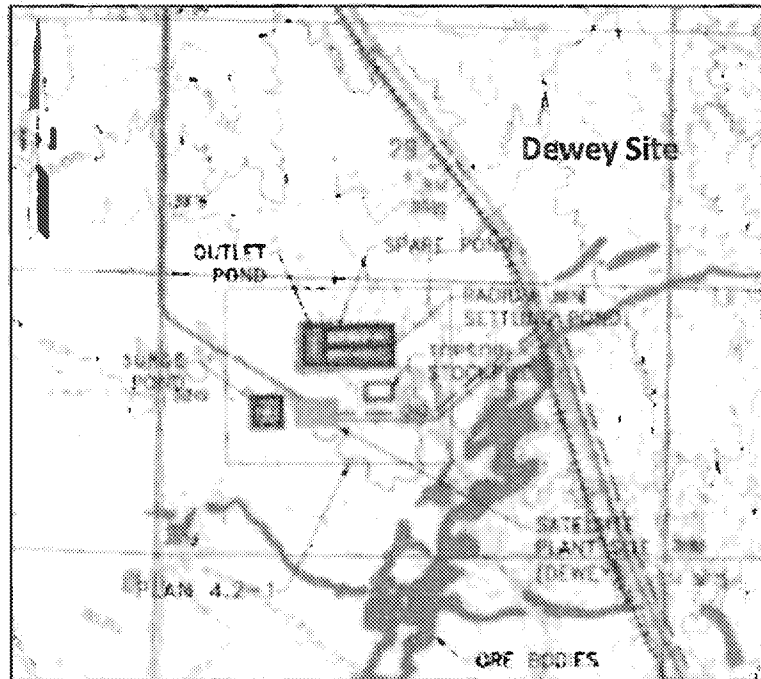


Figure 1. Map showing the location of the proposed Dewey-Burdock uranium recovery site.

Treatment and Storage Ponds for Deep Well Injectate



Waste fluids from the uranium recovery process will be treated in the radium settling ponds. After radium removal, the treated water will be stored in the outlet ponds and surge ponds. There will also be a spare radium treatment pond for backup. After treatment, the water will flow to the deep injection wells.

The Burdock Area central plant pond will store brine from the reverse osmosis treatment process used during groundwater restoration before the brine is treated in the radium settling ponds.

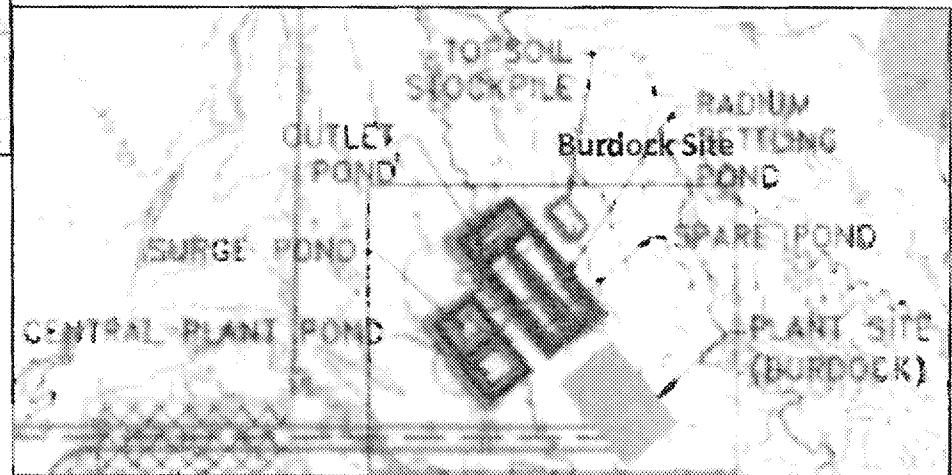


Figure 2. The Proposed Ponds for the Treatment and Storage of the Deep Injection Well Injectate.

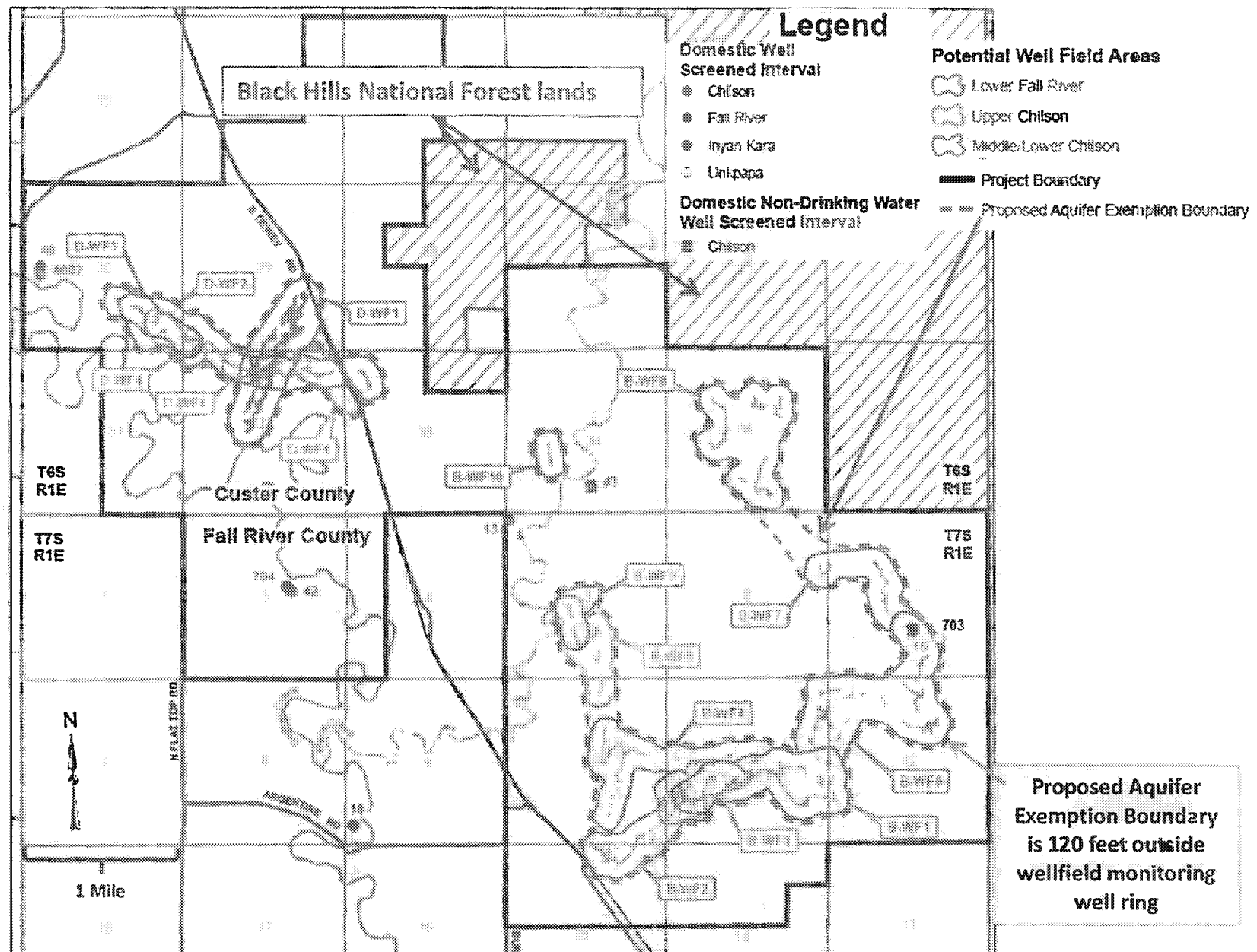
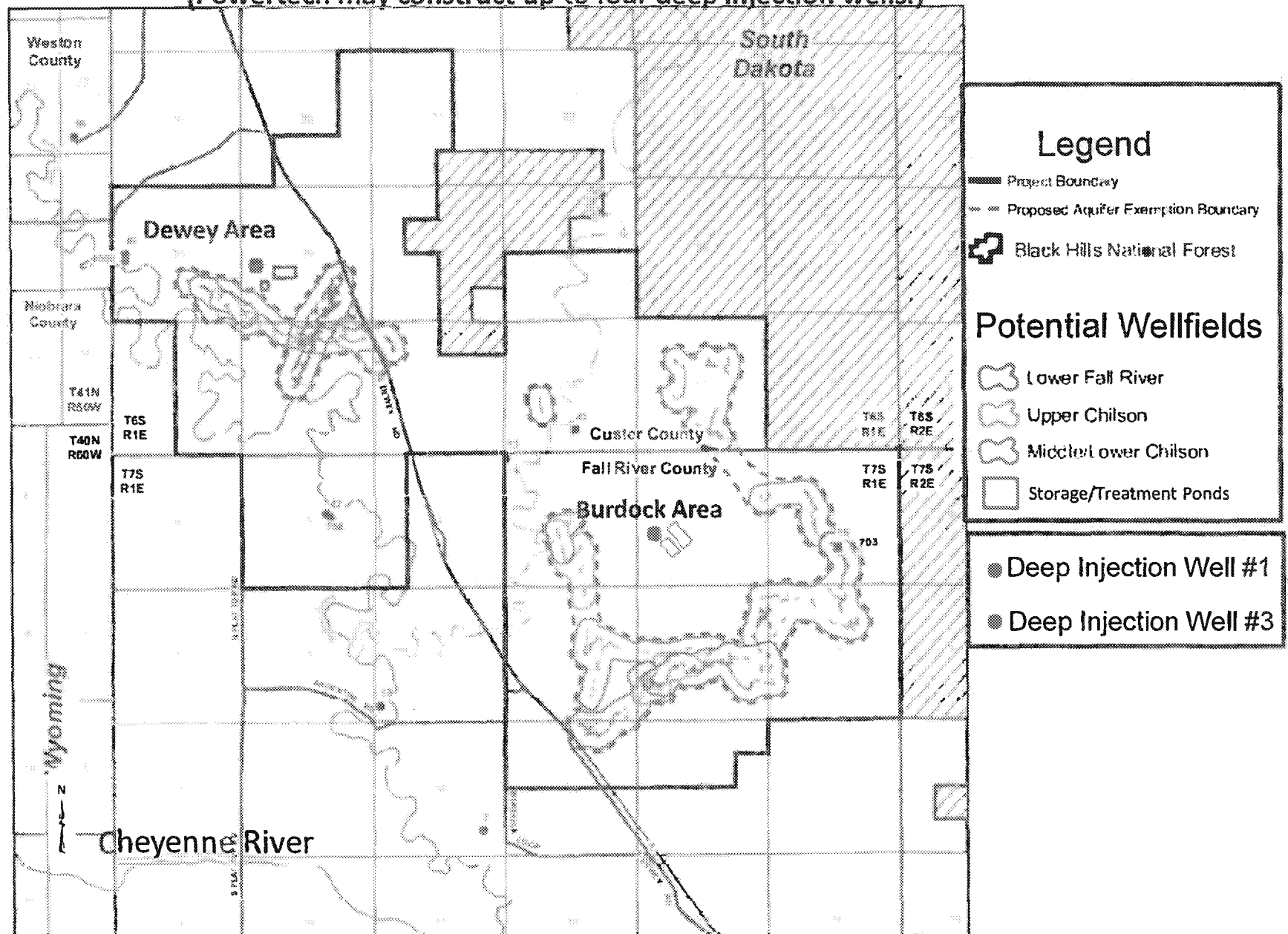


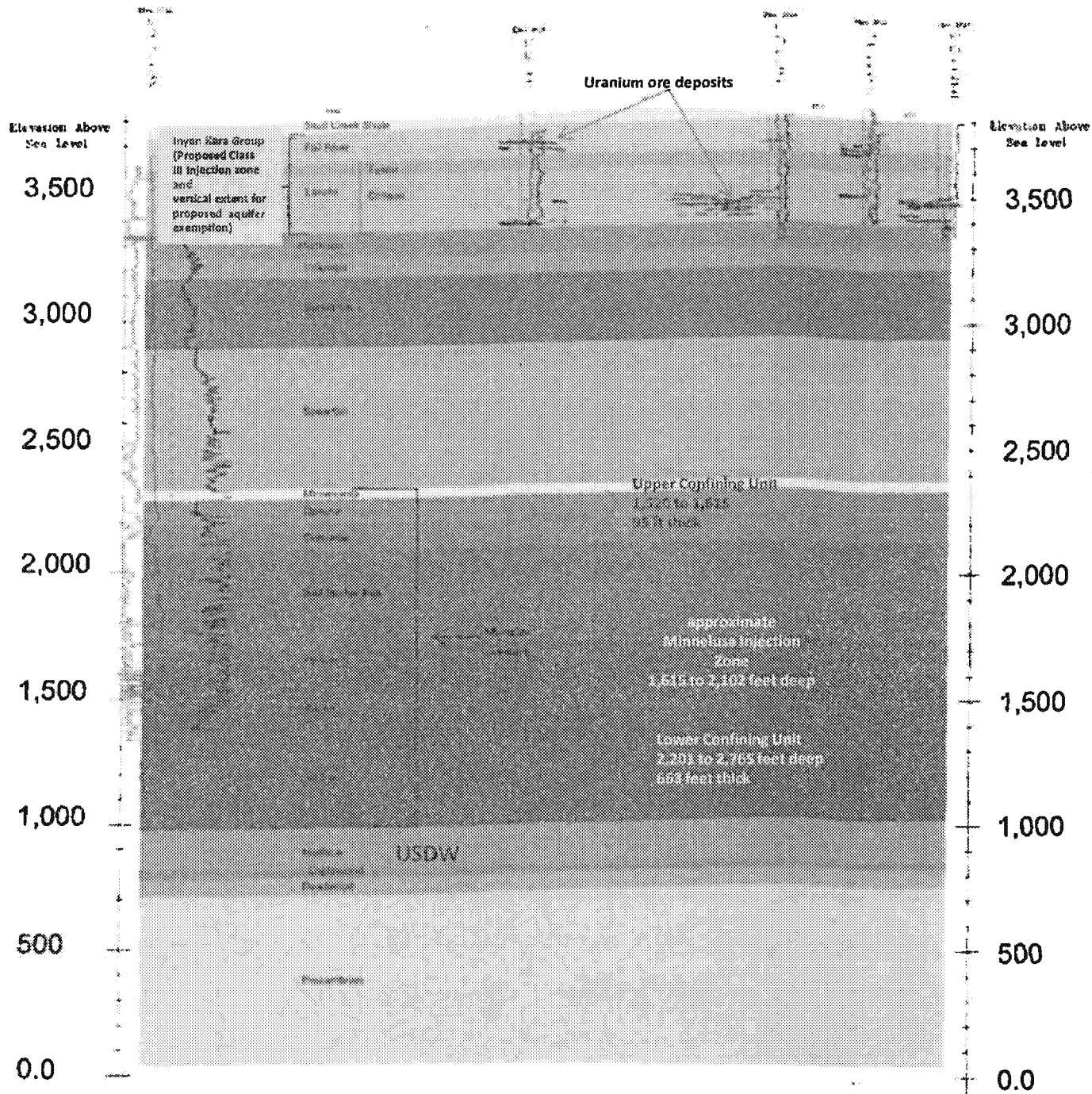
Figure 3. Map showing locations of the proposed wellfields containing Class III injection wells, the aquifer exemption boundary and the UIC permit boundary.

**Figure 4. Map showing locations for the two currently proposed deep injection wells.
(Powertech may construct up to four deep injection wells.)**



E
Northwest
Dewey

E'
Southeast
Burdock



Z=1X

Figure 5. Stratigraphic cross-section of geologic formations present at the Dewey Burdock site and proposed injection zones for the Class III and deep Class V injections wells.